ALLEN & OVERY

Key Regulatory Topics: Weekly Update

25 January 2019 – 31 January 2019

BREXIT

Please see the product sections for updates on draft SIs published in anticipation of a hard Brexit.

Please see the Insurance section for an update on the UK and Switzerland post-Brexit insurance agreement.

Please see the Capital Markets section for an update regarding Prospectuses: ESMA Q&A version 29 and Transparency Directive: updated ESMA Q&As.

FMLC paper on issues of legal uncertainty arising in the context of emissions allowances after Brexit
On 31 January, the FMLC published a paper identifying issues of legal uncertainty in the context of emission allowances after Brexit. The FMLC has identified that the UK's withdrawal from the EU raises various issues of legal uncertainty relating to the EU emissions trading scheme (EU ETS) and European emissions allowances (EAUs), whether the UK leaves the EU ETS from the date of exit (as is expected in the event of a hard Brexit) or stays in the EU ETS until the end of 2020. In the paper, the FMLC examines these issues of legal uncertainty, including: (i) the effect of a hard Brexit on existing contracts relating to OTC transactions in EAUs; (ii) the legal nature of UK EAUs, should a separate UK-only ETS be established; and (iii) the regulation of EAUs (under EU and UK law and regulation), UK EAUs and activities related to these allowances, during any transition period or following a hard Brexit. The FMLC considers the impact that Brexit may have on the UK's participation in the EU ETS (in particular, on UK account holders in the Union Registry). It also examines some of the ways by which the uncertainties identified might be mitigated, including through clarification by the EC and industry associations, various forms of contingency planning by market participants and possible legislative action by the UK and the EU.
Read more

Draft Financial Regulators' Powers (Technical Standards etc) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 laid before Parliament
On 29 January, a draft version of the Financial Regulators' Powers (Technical Standards etc) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019 was published together with a draft explanatory Memorandum. The Regulations have been laid before Parliament. Part 2 of the Regulations will amend the Financial Regulators' Powers (Technical Standards etc) (Amendment etc) (EU Exit) Regulations 2018 (2018 Regulations) to add additional BTS to the Schedule to the 2018 Regulations to enable the FCA, the PRA and the BoE to remove deficiencies in those additional BTS using the powers in the 2018 Regulations. The draft explanatory memorandum explains that, since the 2018 Regulations were laid, additional BTS have come into force and will therefore be transferred to the UK statute book on exit day by the European Union (Withdrawal) Act 2018. These will also contain deficiencies that will need to be addressed so that they continue to operate effectively when the UK leaves the EU. Specifically, the Regulations will add BTS relating to the BMR, the European Long-Term Investment Funds Regulation (ELTIF Regulation), MAR, the BRRD and CRR. Part 3 of the Regulations will make minor technical

amendments in relation to the powers transferred to HMT and the FCA under the Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2018. The Regulations will come into force on the day after the day on which they are made.
Statutory Instrument
Explanatory memorandum

Draft Financial Services (Distance Marketing) (Amendment and Savings Provision) (EU Exit) Regulations 2019 laid before Parliament
On 28 January, a draft version of the Financial Services (Distance Marketing) (Amendment and Savings Provisions) (EU Exit) Regulations 2019 was published together with a draft explanatory memorandum. The Regulations, which have been laid before Parliament, will make amendments to the Financial Services (Distance Marketing) Regulations 2004 (2004 Regulations) to ensure that they continue to operate effectively in the UK once the UK has left the EU. The Regulations will come into force on exit day, apart from Part 1 (Introduction) and Part 2 (Amendment of the 2004 Regulations), which will come into force on the day after the day on which the Regulations are made. HMT published a draft version of the Regulations on 12 December 2018.
Statutory instrument
Explanatory memorandum

FMLC letter on Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019
On 25 January, FMLC published a letter to HMT highlighting an issue of legal uncertainty relating to Regulation 39 of the draft Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019. Regulation 39 of the draft Brexit SI updates the financial promotion rules provided in section 137R of FSMA. Section 137R(4) states that the FCA may make rules applying to authorised persons in relation to communications by or approved by them if the FCA considers that such rules are required to ensure compliance with certain "listed requirements". Regulation 39(4) inserts a new clause (5A) in section 137R explaining that these "listed requirements" mean requirements that appear to the FCA to correspond to the requirements of various EU legislation including the MiFID II, the UCITS Directive and the Directive on insurance distribution. The FMLC is concerned that the definition is very uncertain, especially given the extent of modified retained EU law. A more specific list would be useful. The draft Regulations were published in December 2018.
Read more

Treasury Committee launches new inquiry into future of UK's financial services post Brexit
On 25 January, the House of Commons Treasury Committee published a press release announcing the launch of a new inquiry into the future of financial services in the UK after Brexit. It has also published a webpage summarising the scope of the inquiry. The Committee will consider what the government's financial services priorities should be when it negotiates the UK's future trading relationship with the EU and third countries. It will also look at how the UK's financial services sector can take advantage of its new trading environment with the rest of the world, and whether the UK should maintain the current regulatory barriers that apply to third countries. Nicky Morgan, Committee Chair, commented in the press release that the UK may converge, seek equivalence, or diverge from the EU. As part of its inquiry, the Committee will examine the risks and rewards of each of these choices. It will also explore opportunities outside Brexit, such as FinTech. She adds that after the Committee has taken evidence from industry, regulators, ministers and officials, it will make a series of recommendations to the government and regulators about what should be prioritised in negotiations with the EU and the rest of the world.
Read more

CAPITAL MARKETS

Prospectuses: ESMA Q&As version 29
On 31 January, ESMA published the 29th updated version of its questions and answers on prospectuses. New questions 103 and 104 have been prepared in case the UK leaves the EU without a withdrawal agreement. They will not apply if a withdrawal agreement is in place when the UK leaves the EU. Question 103 addresses the question of how issuers who have chosen the UK as their home member state should choose a new home member state. ESMA notes that Article 2(1)(m)(iii) of the Prospectus Directive lays down the principle that third country issuers should be afforded a choice when determining their home member state and that this choice should be limited to member states in which the issuer first undertakes an offer or admission to trading. ESMA is of the view that applying these principles to issuers having to choose a new home member state because of the UK's withdrawal from the EU would entail allowing such issuers to

choose as if for the first time. As such, these issuers should choose between the EU27 member states or the EEA EFTA states in which they have activities after the UK's withdrawal. Offers that opened and closed before the UK's withdrawal should be disregarded. Question 104 concerns the use of prospectuses approved by the UK before its withdrawal from the EU. ESMA considers that prospectuses and supplements approved by the UK while it was a member state cannot be passported to EU member states or EEA EFTA states after a no deal Brexit, since, as a third county, the UK will no longer be covered by the passporting mechanism set out in Article 18 of the Prospectus Directive. Prospectuses approved in the UK and passported to one or several EU member states or EEA EFTA states before the UK's withdrawal can no longer be supplemented. As a result, such prospectuses can no longer be used to offer securities to the public or admit securities to trading on a regulated market within EU member states or EEA EFTA states, since to do so would entail a risk of a significant new factor, material mistake or inaccuracy arising without the issuer being able to inform investors as required by Article 16 of the Prospectus Directive.
Read more

Transparency Directive: updated ESMA Q&As

On 31 January, ESMA published an updated version of its questions and answers on the Transparency Directive. New question 26 has been prepared in case the UK leaves the EU without a withdrawal agreement in place. It will not apply if a withdrawal agreement has been made before the UK leaves the EU. The question concerns the obligations that an issuer which had the UK as its home member state before the withdrawal and which is admitted to trading on one or more regulated markets in the EU27 member states or the EEA EFTA states has under the Transparency Directive in relation to disclosing its choice of a new home member state. An issuer in this situation should determine its home member state according to the rules laid down in Article 2(1)(i) of the Transparency Directive. It should disclose its new home member state in accordance with Articles 20 and 21 of the Transparency Directive and should, in addition, disclose it to: (i) the competent authority of the member state where it has its registered office, where applicable; (ii) the competent authority of the home member state; and (iii) the competent authorities of all host member states. ESMA considers that it would be beneficial if issuers would choose and disclose their new home member states under the Transparency Directive without delay after 29 March. If the issuer does not make any disclosure within three months after this date, then ESMA is of the view that the member state where the issuer's securities are admitted to trading on a regulated market should be considered its home member state. If the issuer's securities are admitted to trading on regulated markets situated or operating within more than one member state, then all those member states should be considered the issuer's home member states until a subsequent choice of member state has been made and disclosed by the issuer.
Read more

Shareholder Rights Directive II and related party transactions: FCA consultation on proposed changes to Handbook

On 30 January, the FCA published for consultation its proposed Handbook changes for the purpose of implementing those provisions of the revised Shareholder Rights Directive (SRD II) that would require qualifying companies to have safeguards with respect to material transactions with related parties. Listing Rule 11 (LR 11), applicable to premium-listed but not standard-listed companies, already sets out relevant requirements that are more stringent than those set out in SRD II. The FCA proposes to implement SRD II in such a way as to leave the existing premium listing regime intact. Briefly, the FCA proposes to amend the Disclosure Guidance and Transparency Rules sourcebook so as to require UK companies with shares admitted on a regulated market to disclose and seek board (as opposed to shareholder) approval for material related party transactions. The proposed materiality threshold is 25% of any one of a number of profits, assets, market capitalisation and gross capital tests. The tests broadly mirror those currently set out in LR 11. While premium-listed companies will have some additional disclosure obligations, if they meet existing disclosure and approval requirements they should be broadly compliant in respect of transactions that are within the scope of both the SRD II and Listing Rule regimes. One key difference between the premium listing regime and the SRD II regime is that the definition of related party used for the purposes of the latter, being based on IAS 24, is wider. The FCA is not proposing to limit the new obligations to UK-incorporated issuers on the principle that any listed company in a given listing category should have to meet the same requirements whatever its country of incorporation. Issuers within scope of the new DTR regime, and companies admitted to listing on 10 June, would be required to comply from the start of the first financial year thereafter. Transitional arrangements are also proposed. The deadline for responses to the consultation is 27 March.
Read more

FCA consults on proposals to improve shareholder engagement

On 30 January, the FCA published a consultation paper on proposals to improve shareholder engagement (CP19/7). CP19/7 sets out how parts of the revised Shareholder Rights Directive (SRD II) will be implemented in the UK. SRD II aims to promote effective stewardship and long-term investment decision-making. Primarily, it aims to achieve this by enhancing transparency of engagement policies and investment strategies across the institutional investment community. CP19/7 only relates to implementation of those parts of SRD II that apply directly to financial services firms that the FCA regulates, and to issuers in respect of related party transactions. The FCA plans to take a copy-out approach to transposing the SRD II requirements for life insurers and asset managers. Its proposals include: (i) a requirement for life insurers and asset managers to develop and publicly disclose a shareholder engagement policy or to explain why they have chosen not to do so; (ii) a rule applying the relevant conflict of interest rules to asset managers' engagement activities; (iii) a rule requiring life insurers to publicly disclose how the main elements of their equity investment strategy are consistent with the profile and duration of their long-term liabilities, and how they contribute to the medium to long-term performance of their assets; and (iv) a rule requiring asset managers to disclose certain information, at least on an annual basis, to the firms they provide services to. This is to enable asset owners to assess whether and how the asset manager is acting in their best long-term interests and to assess whether the asset manager's strategy allows for effective shareholder engagement. It also sets out the practical implications of these proposals for life insurers and asset managers. Draft Handbook text amending the Senior Management Arrangements, Systems and Controls sourcebook and the Conduct of Business sourcebook, is set out in the Shareholder Rights Directive (Asset Managers and Insurers) Instrument 2019, in Appendix 1 to CP19/7. The instrument will come into force on 10 June. The deadline for responses to the consultation is 27 March.
Read more

Prospectus Regulation: FCA consultation on proposed changes to Handbook
On 28 January, the FCA published for consultation its proposed changes for the purpose of aligning the Handbook with the Prospectus Regulation. Appendix 1 of the consultation paper sets out a draft of the Prospectus Regulation Rules Instrument 2019, which on its face would come into effect on 21 July (the day on which the Prospectus Regulation substantially comes into effect). The FCA's plan is to keep the structure of a new sourcebook as similar as possible to the current version, reproducing key sections of the Prospectus Regulation, other relevant EU legislation and domestic law for reference. It seeks views on this approach as well as on its proposals regarding: (i) the data that issuers must submit to the FCA and the required format (electronic); (ii) the FCA (rather than issuers) to publish approved prospectuses on the National Storage Mechanism – the FCA notes that this could occur before the issuer has itself published a prospectus; and (iii) fees. The FCA aims to issue a policy statement by the end of May, and outlines proposed transitional arrangements leading up to July.
Read more

CONDUCT

Banking Standards Board consults on best practice guidance on implementing certification regime regulatory references requirements
On 30 January, the BSB published a consultation paper on proposed guidance on implementing the regulatory references requirements under the certification regime. It has also published the draft guidance itself, which takes the form of a statement of good practice. The BSB explains that, in implementing the regulatory reference requirements, firms must balance a range of significant considerations. These relate in part to legal and regulatory obligations (employment law, data protection, the requirement to give to another firm full and accurate information of relevance to an individual's fitness and propriety), but also to more general, ethical principles such as transparency of process, and consideration of the importance of a regulatory reference to an individual's career and livelihood. The draft good practice guidance aims to help firms navigate these considerations. It is not intended to be binding on BSB members but the BSB hopes that members and the wider sector will find it relevant and practical, and that they will use it in developing their own processes, policies and procedures for implementing the regulatory references requirements. The draft guidance is based on three principles: fairness, proportionality and consistency. It covers: (i) good practice when providing regulatory references; (ii) good practice in obtaining a regulatory reference; and (iii) the type of information to include in a reference. The deadline for responses to the consultation is 20 March. The guidance represents the pooling of member firms' knowledge through the BSB's cross-industry certification regime working group (CRWG). The CRWG meets regularly to consider where voluntary good practice guidelines could be useful to firms that are implementing the certification regime. To date, the resulting guidance has focused on helping to raise standards of behaviour and competence in banking through the effective assessment of fitness and propriety.

Read more

Corporate governance: FCA and FRC discussion paper on building a framework for effective stewardship

On 30 January, the FCA and FRC published a joint discussion paper considering how to improve stewardship within the existing structure of UK capital markets. The discussion paper aims to advance the debate around what effective stewardship entails, what the minimum expectations of financial services firms which invest for clients and beneficiaries should be, what higher standards the UK should aspire to and how these might best be achieved. The discussion paper accompanies two consultation papers published by the FRC and FCA on the same day, which seek views on the FRC's proposed revisions to the Stewardship Code and its associated reporting requirements, as well as proposed changes to the FCA Handbook to implement key provisions of the SRD II in the UK. Particular issues on which the discussion paper invites stakeholder input include: (i) the key attributes of effective stewardship by asset owners and managers – the discussion paper suggests this might include a clear understanding of the scope, role and purpose of stewardship and good communication to align stewardship objectives; constructive, oversight, engagement and challenge; culture and institutional structures that promote and support investment strategies and stewardship activities consistent with clients' and beneficiaries' financial interests over their investment time horizon, coupled with reporting and disclosure practices to demonstrate that stewardship activities reflect these interests; (ii) the appropriate institutional, geographical and asset class scope of stewardship – views are also sought on whether there is more that should be done to incentivise international investors and to ensure they recognise the benefits of exercising stewardship, including in respect of their assets in the UK; (iii) whether current and proposed regulation supports the role of stewardship in promoting well-functioning markets, and how far the balance between regulation and the Stewardship Code will deliver an effective regulatory framework – views are also sought on any areas where additional regulatory rules should be considered either to improve stewardship quality or prevent poor practice, rather than relying solely on promoting effective practices through the revised Stewardship Code; (iv) whether there are any issues with proxy advisers that are not adequately addressed by the SRD II, and what measures would be an effective and proportionate response to such issues; and (v) whether, to support effective stewardship, the FCA should be considering amendments to other aspects of the regulatory framework affecting the interaction between investors and issuers, including the Listing Rules, Prospectus Rules and Disclosure Guidance and Transparency Rules. The deadline for responses to the consultation is 30 April.
Read more

FICC Markets Standards Board secondary market trading error compensation standard

On 28 January, the FICC Markets Standards Board (FMSB) published its secondary market trading error compensation standard for FICC markets. The standard sets out expected behaviours that are designed to improve practices regarding the payment of compensation for trading errors. These expected behaviours are designed to enhance transparency and reduce the risk that such payments create a false or misleading impression in the market or create conflicts of interest. The standard applies to all participants in the wholesale secondary FICC markets in Europe (but subject to any applicable local regulatory restrictions). However, the FMSB anticipates that it will be adopted by market participants in other jurisdictions over time. It is intended to apply in respect of the payment of compensation agreed between the parties arising out of a trading error. It contains two core principles: (i) Core Principle 1 covers methods for effecting payment of compensation, identifying some that are appropriate and some that are not, such as those effected by way of wash trades, off market priced trades or other transfers of financial instruments; and (ii) Core Principle 2 sets out the requirement that firms should have policies and procedures in place relating to the handling of compensation payments subject to the standard.
Read more

CONSUMER/RETAIL

ESMA temporary restriction on CFDs applicable from 1 February published in OJ

On 31 January, ESMA Decision (EU) 2019/155 of 23 January to renew the temporary restriction in Decision (EU) 2018/1636 on the marketing, distribution or sale of contracts for differences (CFDs) to retail clients was published in the OJ. ESMA announced in December 2018 that it was renewing the restriction, which was last renewed in Decision (EU) 2018/1636 with effect from 1 November 2018, for a further three-month period from 1 February. It is renewing the restriction on the same terms as those set out in Decision (EU) 2018/1636 as ESMA considers that a significant investor protection concern relating to the offer of CFDs to retail clients continues to exist. The decision applies from 1 February for a period of three months. It has been made under Article 40 of MiFIR, which gives ESMA the power to introduce temporary intervention

measures on a three-monthly basis. Before the end of the three months, ESMA must review the measures and consider whether they should be extended for a further three months.
Read more

FINANCIAL CRIME

Please see the Structural Reform section regarding HMT progress update on proposed ESFS reform legislative package.

JMLSG outlines 2019 workplan
On 31 January, the Joint Money Laundering Steering Group (JMLSG) published a press release outlining its workplan for 2019. According to the press release, the workplan includes: (i) matters arising from the expected implementation of MLD5 by January 2020; (ii) reviews of sectoral guidance for sectors such as credit unions, brokerage services and funds; and (iii) new areas of guidance, covering areas such as virtual currency exchanges, digital identities and payment initiation services. At intervals during 2019, the JMLSG intends to publish on its website further relevant updates on its work. Any changes to UK legislation due to Brexit will be reflected accordingly in the JMLSG guidance. In addition, the JMLSG plans to implement an updated and improved website in 2019. The press release notes that, earlier in January, the JMLSG published revised guidance relating to anonymous safe-deposit boxes. HMT approval is still awaited regarding the revised versions of the JMLSG sectoral guidance relating to asset finance and syndicated lending, which were published in May 2018.
Read more

EC adopts Delegated Regulation containing RTS on measures to mitigate money laundering and terrorist financing risk under MLD4
On 31 January, EC adopted a Delegated Regulation supplementing the MLD4 with RTS specifying the minimum action and the type of additional measures credit and financial institutions must take to mitigate money laundering (ML) and terrorist financing (TF) risk in certain third countries. The RTS specify how credit and financial institutions should manage ML and TF risks, as required by Article 8 of MLD4, where a third country's law prevents the implementation in their branches or majority-owned subsidiaries of group-wide policies and procedures on anti-money laundering (AML) and countering the financing of terrorism (CFT). This may occur, for example, when the sharing of customer-specific information within the group conflicts with local data protection or banking secrecy requirements. The next step is for the Council of the EU and the EP to consider the Delegated Regulation. If neither of them objects, it will enter into force twenty days after it is published in the OJ. The Delegated Regulation will apply three months after it has entered into force. The Joint Committee of ESAs submitted the final draft RTS, in accordance with a mandate under Article 45(6) of MLD4, to the EC in December 2017. Member states were required to transpose MLD4 by 26 June 2017.
Read more

FINTECH

Please the Financial Crime section for an update on the Joint Money Laundering Steering Group's 2019 workplan.

FCA update on functions, membership and governance of GFIN
On 31 January, the FCA published a new webpage that provides an update on the Global Financial Innovation Network (GFIN), which was launched in January, together with the terms of reference for membership and governance of the GFIN. The GFIN is a network of 29 organisations committed to supporting financial innovation in the interests of consumers. Its primary functions, set out in the terms of reference, are to act as a network of regulators to collaborate and share experience of innovation in respective markets, provide a forum for joint policy work and provide firms with an environment in which to trial cross-border solutions. The GFIN was launched following a positive response from industry and other international regulators to the FCA's August 2018 consultation paper. Since the consultation ended the participating regulators have agreed to: (i) launch a pilot phase of cross-border testing, which has a one-month application window – the pilot will provide real-time insight into how a product or service might operate in the market. Interested firms should submit applications to each jurisdiction in which they would like to test before the 28 February deadline. Pilot tests will run for a six-month period, unless regulators agree to extend them. The FCA states that it expects the pilots to run from Q2. Applicant firms are expected to be flexible and agile in their participation, and can provide the GFIN regulators with feedback on their experience. Over time, trials could inform regulatory authorities about potential areas of regulatory convergence, although this is

considered to be a longer-term opportunity; and (ii) formalise the membership and governance structure for regulators and international organisations interested in joining the GFIN. Membership has expanded from the founding 12 members, and interested regulators and international organisations are invited to review the tiers of membership and consider the potential benefits and commitment levels that come with joining the network. Regulatory members are able to just focus on the network and joint RegTech work, and do not need to support trials.
Read more

FUND REGULATION

EBA letter on timings for mandates in Investment Firms Regulation and Directive

On 28 January, the EBA published a letter that it has sent to the EC, the Council of the EU and the EP on the timings for mandates relating to the proposed Investment Firms Regulation (IFR) and the proposed Investment Firms Directive (IFD). The Council and the EP agreed their negotiating positions on the IFR and the IFD in September 2018 and January 2019 respectively. Each of the Council and EP's texts contain mandates for the EBA to produce technical standards, guidelines and reports supplementing the legislation. The EBA is concerned that the current timings proposed for these mandates risks compromising the quality of its work. It sets out in an Annex to the letter, details of the mandates currently envisaged by the co-legislators, together with its proposed revised deadlines for those mandates. It recommends revising the deadlines for the mandates into three different groups with submission dates of 12, 18 and 24 months after the entry into force of the IFR and the IFD and specifying that EBA's review of all existing guidelines applicable to investment firms should be delivered three years after the legislation's entry into force. The EBA also recommends that those mandates that are currently without a specific deadline should remain as they are.
Read more

INSURANCE

FCA consults on general insurance value measures reporting

On 30 January, the FCA published a consultation paper on general insurance (GI) value measures reporting (CP19/8). CP19/8 sets out the FCA's proposals to require firms to report GI value measures data to the FCA for publication, together with additional requirements for firms to use this data as part of the monitoring and governance of their insurance products. The FCA's proposals are aimed at addressing poor product value and quality and reducing the risk of unsuitable GI products being bought or sold. The FCA's proposals in CP19/8 cover the following areas: (i) product scope; (ii) reporting responsibility; (iii) key elements of data reporting; (iv) value measures and metric definitions; (v) publication of data; and (vi) product governance. The draft rules for the FCA Handbook are set out in the Value Measures Reporting and Monitoring Instrument [2019], which is in Appendix 1 to CP19/8. Following its GI add-ons market study (MS/1) and related discussion paper and feedback statement, the FCA has, since 2016, been conducting a pilot of the publication of value measures data for a sample of insurers. In 2018, the FCA assessed the impact of the pilot and found it had a positive impact, improving transparency and awareness of different indicators of product value. Firms also used the data to consider product improvements. Given this success, alongside CP19/8, the FCA has published a webpage with the third set of GI value measures data for 31 insurers (including both UK and EEA firms) for the year ending 31 August 2018. This follows previous GI value measures data publications in January 2017 and March 2018, covering data for the years ended 31 August 2016 and 2017 respectively. The FCA has also published a webpage comparing the second and third data sets. The deadline for responses to the consultation is 30 April. The FCA will consider the feedback received and intends to publish a policy statement later in 2019 with its response to the feedback and final rules.
Read more

FCA policy statement and final rules and guidance on previously rejected PPI complaints and further mailing requirements

On 30 January, the FCA published a policy statement on previously rejected payment protection insurance (PPI) complaints and further mailing requirements: feedback on CP18/33 and final rules and guidance (PS19/2). The FCA consulted in CP18/33 on proposed new rules requiring firms to write to certain previously rejected PPI complainants to inform them they can make a new complaint. CP18/33 also set out proposed guidance on these proposed mailing requirements and the FCA's existing mailing requirement. In Annex 2 to PS19/2, the FCA summarises and responds to the feedback received to CP18/33. The FCA has considered this feedback, but it has not substantively changed its view. Accordingly, the final rules and guidance are largely unchanged from those proposed. The FCA believes the final rules and guidance will: (i) help to

ensure fair and consistent outcomes for relevant PPI complainants; (ii) support its PPI consumer communications campaign; and (iii) support its overall aim of bringing the PPI issue to an orderly conclusion in a way that secures appropriate protection for consumers and enhances the integrity of the UK financial system. The final rules and guidance are set out in the Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 4) Instrument 2019 (in Appendix 1 to PS19/2). This instrument was made by the FCA board on 24 January and came into force on 30 January. The rules and guidance will affect firms that sold regular premium or single premium PPI, or provided credit agreements covered by these types of PPI. These firms must complete the required mailings as soon as reasonably practicable and at the latest by 29 April. The FCA will shortly begin discussions with stakeholders to agree a standard core letter text for firms to use in their mailings. It will also, as part of its supervisory work, discuss with firms their approach to these new mailings and also the supplementary mailings it expects some firms to make under its existing mailing rule.
Read more

PRA letter to insurers on managing cyber insurance underwriting risk
On 30 January, the PRA published a letter it has sent to the chief executives of specialist general insurance firms on managing cyber insurance underwriting risk. In the letter, the PRA refers to its supervisory statement on cyber insurance underwriting risk (SS4/17), which it published alongside its July 2017 policy statement. It explains that its letter provides feedback on the key themes that emerged from firms' responses to a follow-up survey it carried out in May 2018 and highlights areas where it considers firms can do more to ensure the prudent management of cyber risk exposures. It reports that the survey results suggest that, although some work has been done, firms need to cover more ground, especially on non-affirmative cyber risk management, risk appetite and strategy. In addition, having reviewed firms' survey responses, it still considers that the expectations set out in SS4/17 are relevant and valid. It explains that, since it published SS4/17, it has engaged with several regulatory authorities and international forums to develop a co-ordinated approach. Firms reported challenging market conditions, broker pressure, and lack of historic data, models, and expertise as the main impediments for the prudential management of cyber underwriting risk. While it appreciates these challenges, it does not believe they are insurmountable. It also welcomes recent announcements about individual firms' efforts to manage non-affirmative cyber risk in their books of business. It stresses that firms are responsible for progressing their work and fully aligning with the expectations in SS4/17. It requests insurers to develop an action plan on reducing the unintended exposure to non-affirmative cyber risk by H1, with clear milestones and dates by which they will take action. It announces that, over the rest of 2019, it will: (i) provide further, targeted feedback to individual surveyed firms by the end of Q1; (ii) co-ordinate with Lloyd's to agree any follow-up actions regarding Lloyd's managing agents; and (iii) carry out sample deep-dive reviews to other firms in H2 to assess how they are meeting the expectations in SS4/17. It states that it will continue to keep this subject under review in the light of the progress firms make on the outstanding areas. Depending on progress, it will consider whether any further steps are appropriate in due course, such as potential revisions or additions to SS4/17.
Read more

ESRB decision establishing a co-ordination framework for consultation by supervisory authority with ESRB on extension of period under Article 138(4) of Solvency II Directive published in OJ
On 29 January, a decision of the ESRB establishing a co-ordination framework for consultation by a supervisory authority with the ESRB on an extension of the period under Article 138(4) of the Solvency II Directive was published in the OJ. Article 138 of the Solvency II Directive establishes the rules and procedures in the event of a non-compliance or risk of non-compliance with the solvency capital requirement (SCR). Specific procedures must be followed to re-establish the level of eligible own funds covering the SCR or to reduce the insurance or reinsurance undertaking's risk profile to ensure compliance with the SCR within a specified period. Under Article 138(4), if EIOPA declares an exceptional adverse situation exists affecting insurance and reinsurance undertakings representing a significant share of the market or of the affected lines of business, the relevant supervisory authority may extend the recovery period for the affected undertakings by a maximum period of seven years. The supervisory authority may consult with the ESRB regarding the extension of the recovery period for undertakings affected by an exceptional adverse situation declared by EIOPA, and may decide on the need for, and the exact content of, the request for this consultation with the ESRB. The decision explains that, to facilitate the consultation process on the extension of a recovery period, it is necessary to set up a co-ordination framework within the ESRB. This can benefit from the existing co-ordination framework under Decision ESRB/2015/4 for the notification of national macroprudential policy measures by relevant authorities and the issuing of opinions and recommendations by the ESRB. In carrying out its assessment, the ESRB must involve the necessary level of expertise on insurance and reinsurance and ensure close co-operation with EIOPA. The decision outlines the procedure to prepare and

approve a response to a request for consultation; the information to be provided by a supervisory authority; the composition and role of the assessment team; and the confidential nature of the ESRB's response to a request for consultation. The decision enters into force on 18 February.
Read more

EIOPA peer review under the Solvency II framework of NCA assessment of AMSB members and qualifying shareholders
On 25 January, EIOPA published the results of its peer review that examined how NCAs assessed the propriety of administrative, management or supervisory body (AMSB) members and qualifying shareholders between January 2016 to May 2017. Key areas of risk include: (i) a number of regulatory frameworks are not aligned with the Solvency II framework and NCAs are applying different standards and scope while assessing propriety; (ii) very few NCAs perform ongoing assessment of the propriety of qualifying shareholders and AMSB members. Ongoing assessment should involve proactive, risk-based and proportionate engagement resulting from the NCAs' own initiative, as part of its supervisory activities; and (iii) a number of NCAs do not make their supervisory expectations and standards known internally to supervisory staff and externally to insurers. Best practices are also set out in the report, including reference to the PRA having a regulatory framework that ensures accountability of individuals. Under the Solvency II Directive, insurers are required to be owned and run by persons of integrity and of good repute to ensure sound and proper management.
Read more

UK and Switzerland sign post-Brexit insurance agreement
On 25 January, HMT published a press release announcing that Phillip Hammond, Chancellor of the Exchequer, has signed a post-Brexit UK-Swiss direct insurance agreement. The new agreement will replicate the effects of the existing EU insurance agreement with Switzerland. It will allow the insurance sectors of the UK and Switzerland to continue trading with one another after the UK has left the EU. For example, the UK-Swiss direct insurance agreement will allow firms to branch into each other's jurisdiction because of mutual recognition of each other's insurance regulations. The agreement will come into force when the current EU-Swiss direct insurance agreement ceases to apply to the UK.
Read more

MARKETS AND MARKETS INFRASTRUCTURE

Please see the Brexit section for the draft Financial Regulators' Powers (Technical Standards etc) and Markets in Financial Instruments (Amendment) (EU Exit) Regulations 2019.

ESMA statement on proposed EMIR Refit implementation issues
On 31 January, ESMA published a statement that addresses implementation issues relating to the proposal for a Regulation to amend EMIR (the Regulation on OTC derivative transactions, CCPs and trade repositories (the Refit Regulation)). The statement addresses the following issues, and has been published ahead of upcoming deadlines, which would represent challenges for certain entities given that the EMIR Refit negotiations are ongoing: (i) clearing and trading obligations for small financial counterparties – the Refit Regulation creates a new category of financial counterparty whose derivative positions are below certain thresholds (that is, small financial counterparties) and exempts them from the clearing obligation in EMIR. However, the deadline for those counterparties to start CCP clearing and trading of their OTC derivative contracts is 21 June. ESMA highlights the potential timing gap that small financial counterparties will face. It states that it expects NCAs not to prioritise their supervisory actions towards financial counterparties whose positions are expected to be below the clearing thresholds when the Refit Regulation enters into force, and to generally apply their risk-based supervisory powers in their day-to-day enforcement of applicable legislation in this area in a proportionate manner; and (ii) backloading requirement for reporting entities – to meet regulatory needs and to reduce the substantial and costly adjustments that reporting entities would need to be compliant, the Refit proposals remove the backloading requirement from Article 9 of EMIR. However, the deadline for complying with the backloading requirement is 12 February. ESMA expects national competition authorities to apply their risk-based supervisory powers in their day-to-day enforcement of EMIR in a proportionate manner. This may include not prioritising counterparties' reporting of backloaded transactions in their day-to-day supervision and enforcement of EMIR.
Read more

Draft Financial Services and Markets Act (Amendment) (EU Exit) Regulations 2019 laid before Parliament

On 31 January, a draft version of the Financial Services and Markets Act 2000 (Amendment) (EU Exit) Regulations 2019, which has been laid before Parliament, was published with an explanatory memorandum. The purpose of the Regulations is to amend the FSMA, to ensure it continues to operate effectively in the UK once the UK has left the EU. The Regulations also amend SIs made under or relating to FSMA, including the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 and the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005. HMT published a draft version of Parts 1 to 6 of the Regulations in December 2018. The Regulations laid before Parliament contain new Parts 7 (Transitional Powers of the Financial Regulators) and 8 (Regulators' fees). This reflects the text of the Regulations (revised to include these new Parts) that was included in a letter from HMT to the House of Commons Treasury Committee earlier in January.
Statutory instrument
Explanatory memorandum

Council of EU compromise legal draft of proposed Directive on credit servicers, credit purchasers and the recovery of collateral
On 31 January, the Council of the EU published a note from the Council Presidency to Delegations, setting out a compromise legal draft of the proposed Directive on credit servicers, credit purchasers and the recovery of collateral. The EC adopted the proposed Directive in March 2018, with the aim of encouraging the development of secondary markets for NPLs. The note does not explain the amendments that have been made in the compromise legal draft. However, it appears that new text is marked in underlined bold black and red text and deletions are indicated in strikethrough. The ECB published an opinion on the proposed Directive, including suggested amendments, in November 2018.
Read more

FCA statement and list of EEA market operators applying to become ROIEs
On 30 January, the FCA published a statement announcing it has published a list of the EEA market operators that have applied to the FCA for recognised overseas investment exchange (ROIE) status or have expressed a formal intention to do so and have consented to be included on the published list. In September 2018, the FCA published a direction clarifying how EEA market operators can apply to become an ROIE. This will enable EEA market operators to continue to provide their members based in the UK with access to their market, should they no longer be able to rely on MiFID II passport rights once the UK leaves the EU. The FCA statement indicates that, since then, several market operators from the EEA have applied, or expressed a formal intention to apply, to become ROIEs. The list (which is included as part the statement) is designed to help with the planning of UK users of EEA trading venues. The FCA notes that, if an EEA operator is not on the list, it does not necessarily mean that UK users will not be able to access trading venues operated by that operator. Overseas market operators that can use the overseas persons exclusion in Article 72 of the Financial Services and Markets Act 2000 (Regulated Activities Order) 2001 (RAO), or do not carry on regulated activities in the UK, do not need to seek recognition as a ROIE. The FCA also points out that the fact an operator is on the list should not be taken as evidence that its application is likely to succeed. Any EEA market operator that has not yet applied, but which believes it may require ROIE status, should contact the FCA immediately.
Read more

ESMA updates Q&As on BMR
On 30 January, ESMA published an updated version of its Q&As on the BMR. The updated Q&As include a new Q&A 4.5, which confirms that the scope of application of the Commission Delegated Regulations adopted under the BMR is identical to the scope of the corresponding requirement specified in the BMR (that is, depending on the type of benchmark). This includes the transitional provisions in Article 51 of the BMR. Reference is made in ESMA's response to regulated-data benchmarks, interest rate benchmarks, commodity benchmarks, significant benchmarks, and non-significant benchmarks. ESMA previously last updated the Q&As in December 2018.
Read more

ESMA updates Q&As on CSDR
On 30 January, ESMA published an updated version of its Q&As on the implementation of the Regulation on improving securities settlement and regulating central securities depositories. Two new Q&As have been added to the section relating to settlement discipline. Both new Q&As concern the cash penalty mechanism provided for under Article 7(2) of the Central Securities Depositories Regulation: (i) Q&A 3: cash penalties (calculation); and (ii) Q&A 4: cash penalties (scope). ESMA previously last updated the Q&As in November 2018.

Read more

ESMA updates MiFID II Q&As on transparency topics for systematic internaliser regime calculations and publications

On 30 January, ESMA updated its action plan for the systematic internaliser (SI) regime calculations and publications, which sits within an updated version of its Q&As on transparency topics under the MiFID II and MiFIR. The action plan has been updated ahead of the next scheduled publication on 1 February. It maintains the ongoing publication for equity, equity-like instruments and bonds, while postponing the publication for derivatives and other non-equity instruments until at the latest 2020. In a related press release, ESMA explains that the update is necessary as data completeness for various non-equity asset classes has not yet reached adequate levels. ESMA therefore considers it premature to publish the SI calculations for non-equity instruments other than bonds at this stage. ESMA will focus in the coming months on further improving the quality and completeness of those asset classes to ensure the publication of the SI calculations takes place as soon as possible. ESMA also explains that to ensure the publication of the SI calculations for derivatives and other non-equity instruments as quickly as possible, additional work is required by ESMA, NCAs and trading venues to further improve the quality and completeness of submitted data. ESMA last updated the Q&As on 4 January.

Read more

Draft Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 laid before Parliament

On 29 January, a draft version of the Transparency of Securities Financing Transactions and of Reuse (Amendment) (EU Exit) Regulations 2019 was published together with an explanatory memorandum. The Regulations, which have been laid before Parliament, correct deficiencies in the retained version of the Regulation on reporting and transparency of securities financing transactions (SFTR) and establish supervisory requirements for trade repositories (TRs). The amendments made by the Regulations ensure that the UK's regulation of securities financing transactions (SFTs) can operate effectively when the UK leaves the EU, and include: (i) changes to the treatment of EEA branches of financial services firms in the UK so that, after exit, EEA branches operating in the UK must report their transactions to a UK TR – this will bring treatment of EEA branches into line with the current treatment of other third country branches in the UK; (ii) amending the list of entities that have the right to access SFT data reported to TRs – EU bodies are removed, and the list is made UK-specific to reflect the UK's position outside the EU; and (iii) responsibilities under the SFTR that currently sit with EU institutions are transferred to the appropriate UK equivalent institution. Part 2 of the Regulations makes consequential amendments to the Financial Services and Markets Act 2000 (Transparency of Securities Financing Transactions and of Reuse) Regulations 2016. Part 4 of the Regulations prescribes enforcement provisions for TRs and modifies FSMA so that the FSMA provision on enforcement applies to TRs under the retained SFTR as well as in FSMA itself. The Regulations will come into force on exit day.

Statutory instrument
Explanatory memorandum

Council of EU Decision incorporating CSDR into EEA Agreement published in OJ

On 29 January, the Council of the EU decision (EU) 2019/134 on the position to be adopted within the EEA Joint Committee regarding the incorporation of the Regulation on improving securities settlement and regulating central securities depositories into the EEA Agreement was published in the OJ. The decision states that Annex IX (Financial Services) to the EEA Agreement should be amended to incorporate the CSDR in accordance with the draft decision of the EEA Joint Committee that is attached to the Council decision. The Council decision enters into force on the date it was adopted.

Read more

ECSDA updates draft CSDR settlement fail penalties framework following consultation process

On 29 January, the European Central Securities Depositories Association (ECSDA) published an updated version of its draft settlement fail penalties framework. The framework aims to create a harmonised set of rules for the creation and operation of settlement discipline cash penalties mechanisms. It will apply to all CSDs subject to the Regulation on improving securities settlement and regulating CSDs or equivalent legislation. In July 2018, ECSDA published, for consultation, an initial draft of the framework. The consultation closed in August 2018. On a related webpage, ECSDA explains that the updated draft of the framework has been drafted to: (i) take consultation responses into account; and (ii) include the confirmation of working assumptions by relevant European authorities (including ESMA and the ECB). ECSDA will

present the updated draft of the framework in a workshop, on 18 February, for discussion with relevant industry stakeholders.
Read more

FCA speech on LIBOR transition and contractual fallbacks
On 28 January, the FCA published a speech by Edwin Schooling Latter, Director of Markets and Wholesale Policy at the FCA, on the transition away from LIBOR and the use of contractual fallbacks. Among other things, Mr Latter comments on: (i) the progress made on the transition to alternative risk-free rates in the bond and derivatives markets and the development of fallback rates; (ii) the uncertainty about how LIBOR may end, one possibility being that the FCA will make an announcement that the rate is no longer representative of the underlying market; (iii) why contracts referencing LIBOR should be replaced or amended before fallback provisions are triggered; and (iv) why, in relation to legacy contracts, market participants should not rely on the LIBOR administrator being permitted, under the BMR, to continue to publish LIBOR.
Read more

ECB Regulation amending Regulation on money market statistics published in OJ
On 25 January, Regulation (EU) 2019/113 of the ECB amending Regulation (EU) 1333/2014 concerning statistics on the money markets (MMSR Regulation) was published in the OJ. The ECB adopted the Amending Regulation in December 2018, stating that the aim of the Regulation is to clarify and simplify some of the existing reporting requirements under the MMSR Regulation and to improve the quality of the data. The Amending Regulation will enter into force on 14 February and will apply from 15 March.
Read more

PAYMENT SERVICES AND PAYMENT SYSTEMS

Please see the Financial Crime section for an update regarding the Joint Money Laundering Steering Group's 2019 workplan including new areas of guidance such as payment initiation services.

PSR Managing Director to leave PSR in April
On 31 January, the PSR published a press release announcing that Hannah Nixon, PSR Managing Director, will stand down from her role in April. Ms Nixon was appointed as the PSR's first Managing Director in May 2014. The press release states that, pending the appointment of a permanent successor to Ms Nixon, the PSR Board has asked Chris Hemsley, currently PSR Head of Policy, and Louise Buckley, currently PSR Chief Operating Officer, to act as joint interim Managing Directors, reporting to Andrew Bailey, FCA Chief Executive.
Read more

PENSIONS

FCA policy statement and further consultation paper on retirement outcomes review measures
On 28 January, the FCA published a policy statement setting out feedback to its consultation on proposed changes to its rules and guidance to address harms identified in its retirement outcomes review (RoR) (CP18/17), together with its final rules and guidance. The FCA published CP18/17 in June 2018 alongside its final report on the retirement outcomes review (RoR). The FCA confirms that it is proceeding largely on the basis on which it consulted, with some refinements in places to reflect feedback received and recent developments. The FCA has also published a further consultation paper on investment pathways and other proposed changes to its rules and guidance. The deadline for responses to the consultation is 5 April. The package of measures will be of interest to firms providing pensions, annuities and income drawdown. The FCA launched the RoR to assess the development of the retirement income market since the introduction of the government's pensions freedoms in April 2015.
Read more

CMA publishes remedies implementation timetable in investment consultants market investigation
On 25 January, the CMA published its timetable for implementation of the remedies set out in the final report of its market investigation into the supply and acquisition of investment consultancy services and fiduciary management services to and by institutional investors and employers in the UK. The final report identified features of both the markets for the supply and acquisition of investment consultancy services and fiduciary management services in the UK to and by pension schemes that restrict or distort competition, and, therefore, found there is an adverse effect on competition in this market. The CMA has decided on a

package of remedies to address the competition issues identified, to promote greater trustee engagement. The statutory deadline for implementing remedial action is 11 June. The CMA intends to publish a consultation on the draft order implementing the remedies in February, notifying the EC of any requirements additional to MiFID II that are intended to be imposed in April.
Read more

PRUDENTIAL REGULATION

Please refer to the Fund Regulation section on an update regarding the EBA letter on timings for mandates in Investment Firms Regulation and Directive.

ESRB report on macro-prudential approaches to NPLs

On 28 January, the ESRB published a report on macro-prudential approaches to NPLs. In the report, the ESRB considers the main triggers, vulnerabilities and amplifiers that can drive system-wide increases in NPLs, highlighting business cycle and asset price shocks as two of the main drivers of system-wide increases in NPLs. The ESRB concludes that no fundamental changes to the existing macro-prudential toolkits appear to be required. It does, however, propose refinements to these toolkits, including recommendations relating to: (i) Early-warning systems – macro-prudential authorities should develop early warning systems to monitor the risks of credit portfolio deterioration from a macro-prudential perspective. The ESRB suggests that further research is needed to identify the systemic risk signals relating to a potential build-up of NPLs; (ii) Borrower-based measures – all member states should include borrower-based measures in their national macro-prudential toolkits, such as limits on the volume of credit granted in relation to collateral value and on the volume of credit granted in relation to income. The ESRB notes that, unlike capital instruments, borrower-based measures are not included in the EU-harmonised legal framework, and their use is governed by member states' national law. It suggests that it and the ECB should carry out further exploratory work on borrower-based measures for non-financial corporations; and (iii) Capital measures – macro-prudential authorities should consider capital-based instruments for addressing vulnerabilities that might later result in system-wide increases in NPLs. In particular, macro-prudential authorities should use the countercyclical capital buffer to prevent the systemic build-up of macro-financial imbalances or to increase banks' resilience when dealing with NPL-related vulnerabilities (or both). They should also consider using the systemic risk buffer when the potential systemic increase in NPL flows is associated with developments in specific market segments or types of debtors as opposed to situations of generalised excessive credit growth. The ESRB produced the report in response to the Council of the EU's request that it should develop macro-prudential approaches to prevent the emergence of system-wide NPL problems, which formed part of the Council's July 2017 action plan on NPLs.
Read more

Council of EU releases text of amendments to CRR II, CRD V, BRRD II and SRM II Regulation agreed with EP

On 25 January, the Council of the EU published a note from the Council's general secretariat to delegations on the banking reforms adopted by the EC in November 2016. These reforms consist of the legislative proposals for the CRR II, the CRD V, the BRRD II and the SRM II Regulation. The note sets out the legal text of amendments to these proposals agreed on a provisional basis between the Council and the EP in trialogues in November 2018. The Council and the EP reached provisional political agreement on the proposals on the basis of these amendments in December 2018. The Annex to the note consists of 19 sections setting out amendments to the proposals relating to issues including the minimum requirement for own funds and eligible liabilities, intermediate EU parent undertakings, the net stable funding ratio and the leverage ratio. A summary of these amendments was published by the Council in a note from COREPER dated 30 November 2018. The Council and the EP have not yet reached final political agreement on the proposals, although they have previously indicated that they aim to adopt the legislation at first reading early in 2019.
Read more

RECOVERY AND RESOLUTION

Please see the Prudential Regulation section for an update regarding the text of amendments to the BRRD II and SRM II Regulation that have been provisionally agreed with the EP.

STRUCTURAL REFORM

HMT progress update on proposed ESFS reform legislative package

On 31 January, the UK government published a letter from John Glen, Economic Secretary to HMT, to Sir William Cash, House of Commons European Scrutiny Committee, and a letter from Mr Glen to Lord Boswell of Aynho, House of Lords EU Committee Chair, in which he provides an update on the progress of negotiations on the proposed European System of Financial Supervision legislative reform package. Mr Glen explains that the proposal was discussed by the Council of the EU on 22 January at a meeting in its configuration as ECOFIN. Although the Council Presidency indicated it intended to start trialogues on the anti-money laundering (AML) and counter-terrorist financing (CTF) component only, a number of member states argued a general approach should be sought on the whole file and noted the Council was very close to reaching a compromise on the whole file in 2018. As a result of this discussion, the Presidency has scheduled an expert level meeting, where a compromise agreement will be put to the Council. The working level discussion is expected to focus on the outstanding issues of governance and the level of the balancing contribution from the EU General Budget. The provisions relating to the supervisory competence of ESMA and the treatment of third countries are unlikely to change from those detailed in Mr Glen's previous letter. If agreement can be reached (which Mr Glen thinks is likely), the file will go to the ECOFIN meeting on 12 February for a general approach. Given the text is likely to align with the government's objectives, should a general approach be reached, Mr Glen asks that the committees grant clearance or waive scrutiny on the core proposal, to enable the government to vote in support of the agreement. In his letter to Lord Boswell, Mr Glen responds to some additional specific queries regarding the AML and CTF component of the proposed ESFS reforms, including the implications on regulated UK firms and individuals of the EBA's increased responsibilities in this area.
Letter to Sir William Cash
Letter to Lord Boswell of Aynho

TAXES/LEVIES

PRA and FCA consult on 2019/20 FSCS management expenses levy limit

On 31 January, the PRA and FCA published a joint consultation paper on the management expenses levy limit (MELL) for the Financial Services Compensation Scheme (FSCS) for 2019/20. Under FSMA, the PRA and FCA must set a limit for the total management expenses that the FSCS can levy on financial services firms without further formal consultation. The proposed MELL of £79.6 million will apply from 1 April. This figure comprises: (i) FSCS management expenses of £74.6 million – this will cover the FSCS' ongoing operating expenses and includes IT, outsourcing, legal and claims handling and other professional services. A breakdown of management expenses by line item is set out in Appendix 3. Appendix 4 provides a breakdown of the MELL by specific and base costs and the allocation to funding classes; and (ii) an unlevied contingency reserve of £5 million. This sum allows the FSCS to respond quickly and efficiently in the event of unforeseen firm failures. The MELL does not cover compensation costs, which are levied separately and are determined by the FSCS. The proposed MELL for 2019/20 is an increase of 2.4% from the 2018/19 MELL, and is in line with inflation. The FCA explains that an increased budget reflects a projected increase in volumes across pension and self-invested personal pension claims, which is expected to be offset by FSCS cost efficiencies. The proposed rules are set out in the draft PRA Rulebook: Non Authorised Persons: FSCS Management Expenses Levy Limit And Base Costs Instrument 2019 and the FCA's Financial Services Compensation Scheme (Management Expenses Levy Limit 2019/2020) Instrument 2019, which are appended to the consultation paper. The deadline for responses to the proposals is 28 February. The PRA and FCA will consider any feedback and, subject to approval by their respective boards, will finalise and publish their rules in respective policy statements or equivalent Handbook notices. The final rules are proposed to be in place on 1 April.
Read more

OTHER DEVELOPMENTS

Speech by Philip Hammond at TheCityUK Annual Dinner 2019

On 30 January, Philip Hammond, Chancellor of the Exchequer, gave a speech at TheCityUK Annual Dinner, addressing various topics including Brexit and cryptoassets.
Read more

FCA Handbook Notice 62

On 25 January, the FCA published Handbook Notice 62, which sets out changes made to the FCA Handbook under instruments made by the FCA board on 13 December 2018, 2 January, and 24 January. It also sets out changes made by the Financial Ombudsman Service board on 14 December 2018. The

Handbook Notice reflects changes made to the Handbook by the following instruments: (i) Personal Current Accounts and Overdrafts (Information and Tools for Customers) Instrument 2018 and Personal Current Accounts and Overdrafts (Information and Tools for Customers) (Amendment) Instrument 2018; (ii) Consumer Credit (High-Cost Credit) Instrument 2018; (iii) Payment Services (Amendment) Instrument 2018; (iv) Small Business (Eligible Complainant) Instrument 2018; (v) Securitisation Regulation Implementation (Fees for Third Party Verifiers) Instrument 2019; (vi) Enforcement (EU Securitisation Regulation) Instrument 2019; (vii) Handbook Administration (Fees Transitional Provision) Instrument 2019; (viii) Payment Services and Electronic Money (Principles for Businesses and Conduct of Business) Instrument 2019; (ix) Collective Investment Schemes Sourcebook (Miscellaneous Amendments) Instrument 2019; and (x) Dispute Resolution: Complaints (Payment Protection Insurance) (Amendment No 4) Instrument 2019.
Read more